days therefrom for the election of new directors.

3. That the respondents continue as directors until the date of the Extraordinary General Meeting of the company.
4. The petitioners shall have the costs of this petition to be paid by the respondents.
5. The petitioners and the respondents to have liberty to apply.

Petition granted.

Solicitors: *Drew & Napier; Khattar Wong & Partners.*

OP 66/86
S/C 3820/87

Application For an Order to suspend/stay Order of Court dated 28/5/87

That in the event that the petitioners or some of them shall be elected as directors (the "new directors") of the Company in place of the respondents and that, on appeal, the decision of the Court is reversed, the new directors shall thereupon be deemed to have vacated their office and the respondents be deemed to have been reinstated as directors, subject to such other orders as the Court of Appeal may make.

Dated this 4th day of June 1987.

(Chan Sek Keong)
Judicial Commissioner.

SAL LEASING (PTE.) LTD. v. HENDMAYLEX PTE. LTD. & ORS.

[O.C.J. (Thean J.) June 3, 1987]

[Singapore – Suit No. 7126 of 1984]

Practice and Procedure – Stay of execution – Matters that would move Court in granting stay – R.S.C. 1980, O. 45 r. 11 & O. 46 r. 10.

Leasing – Equipment – Repossession of – Valuation – Fair value – Fair market value – Sale of equipment by plaintiffs – Balance owing under lease.

The plaintiffs in this case commenced the present action against the three defendants claiming $78,215.57 owing as at September 11, 1984, and interest thereon. Their claim against the first plaintiff is based on a lease of equipment under which the plaintiffs leased to the first defendant certain equipment. The plaintiffs claimed against the second and third defendants as the guarantors. Judgment in default of appearance was entered against the first defendant on October 25, 1984, in the sum of $78,215.57 with interest.

On November 2, 1984, the plaintiffs repossessed the equipment leased to the defendant, and immediately thereafter instructed valuers to value the equipment. The equipment was valued as follows:

(a) Fair Value –$56,000.00

(b) Fair Market Value – $33,000.00

On February 22, 1985, a substantial payment of $48,483.95 was made to the plaintiffs towards satisfaction of the judgment. In March 1985, the Writ was served on the second and third defendants by way of substituted service.

The equipment was sold on June 21, 1985, and September 23, 1985, respectively, for a total sum of $14,600.00.

On February 12, 1986, the plaintiffs applied for summary judgment against the second and third defendants for $23,534.00 for the alleged balance still due and interest and costs. On April 16, 1986, the first defendant took out an application for an order that the judgment entered against it had been satisfied.

The Deputy Registrar ordered that judgment be entered against the second and third defendants in the sum of $22,352.04 with interest thereon and costs, and that the second and third defendants be given unconditional leave to defend the balance of the claim of $1,182.20. The second and third defendants appealed. No appeal against the dismissal of the first defendant's application was brought. On November 11, 1986, Chua J. allowed the appeal, set aside the judgment for $22,352.04 and gave the second and third defendants unconditional leave to defend the claim for $22,352.04.

On November 14, 1986, the first defendant applied for an order that execution on the judgment entered against it on October 25, 1984 be stayed "pending the determination of the issue whether there is any part of the judgment that still remains unpaid." The Assistant Registrar dismissed this application on November 21, 1986. The first defendant appealed.

Held, allowing the appeal: (1) if no judgment had been entered against the first defendant, then by reason of the various matters that have occurred since the judgment, in particular, unconditional leave being given to the second and third defendants to defend the claim for the balance sum of $23,534.00, no judgment would have been entered against the first defendant for that amount or if a judgment had been entered at that date, there would have been a stay pending the outcome of the resolution of the dispute between the plaintiffs and the second and third defendant;

(2) these matters come within the ambit of Order 45 rule 11 and are matters which would or might have prevented a judgment for the sum of $23,534.00 from being entered or made against the first defendant or would or

might have led to a stay of execution if they had occurred at the date of the judgment against the first defendant. Therefore in this case a stay ought to be granted;

(3) the plaintiffs must pay the solicitors for the defendants the sum of $25,719.94 to be held by such solicitors as stakeholders pending the outcome of the trial of the action against the second and third defendants.

Case referred to:

(1) *London Permanent Benefit Building Society* v. *de Baer* [1968] 1 All E.R. 372.

SUMMONS IN CHAMBERS.

Latiff bin Ibrahim for the plaintiffs.

Kan Ting Chiu for the defendants.

Cur. Adv. Vult.

Thean J.: This is an appeal against the decision of the Assistant Registrar in which, on an application by the 1st defendant under Order 45 Rule 11 of the Rules of Supreme Court, 1970, he refused to grant a stay of execution of the judgment entered against the 1st defendant on October 25, 1984, pending the outcome of the trial of plaintiffs' claim against the 2nd and 3rd defendants, to whom unconditional leave to defend this action had been granted. The circumstances that led to the 1st defendant's application are as follows. The plaintiffs commenced the present action against the three defendants claiming for a sum of $78,215.57 owing as at September 11, 1984 and interest thereon. Their claim against the 1st defendant is based on a lease of equipment dated November 8, 1982 under which the plaintiffs leased to the 1st defendant certain machines (collectively called "the equipment") at a rent and on terms and conditions therein provided. By a guarantee in writing executed on November 8, 1982 or thereabout, the 2nd and 3rd defendants guaranteed the obligations of the 1st defendant under the lease, and accordingly, in this action the plaintiffs claim against the 2nd and 3rd defendants as the guarantors. The writ of summons was served on the 1st defendant and, as no appearance was entered on its behalf, judgment in default of appearance was entered against it on October 25, 1984 in the sum of $78,215.57, interest thereon amounting to $1,689.19 up to the date of judgment and $450 costs. That judgment was properly entered and there is no dispute as to the validity of the judgment.

Subsequent to the judgment, several events occurred which, so far as material, are these. First, the plaintiffs on November 2, 1984 repossessed the equipment leased to the 1st defendant, and immediately thereafter instructed Asian Appraisal Co. Pte. Ltd. to prepare a valuation of the equipment. The valuers prepared a report on November 14, 1984 in which they valued the equipment as follows:

(a) Fair Value	– $56,000
(b) Fair Market Value	– $33,000.

Then, on February 22, 1985, a substantial payment of $48,483.95 was made to the plaintiffs towards satisfaction of the judgment. Up to that point of time the writ had not been served on the 2nd and 3rd defendants, and the writ was served on them by way of substituted service only in March 1985. Thereafter, nothing eventful in relation to this action occurred through 1985, except that the plaintiffs sold the equipment in two parts on June 21, 1985, and September 23, 1985, respectively, and realised a total sum of $14,600.

In the early part of 1986, this action was resuscitated; both parties took further steps; the plaintiffs on February 12, 1986, took out an application for summary judgment against the 2nd and 3rd defendants for a sum of $23,534, which the plaintiffs said was the balance sum still due, and for interest and costs, and the 1st defendant on April 16, 1986, took out an application under Order 46 Rule 10 for an order that the judgment entered against it had been satisfied. Both applications came on for hearing before the Deputy Registrar on July 7, 1986. It was argued on behalf of the defendants that on a proper computation of the various amounts based on a correct and true reading of the various provisions of the lease of the equipment, there was no balance owing to the plaintiffs under the lease, and accordingly, in respect of the plaintiffs' application, unconditional leave to defend the action ought to be given to the 2nd and 3rd defendants, and in respect of the 1st defendant's application, entry of satisfaction of the judgment ought to be made. The Deputy Registrar in respect of the plaintiffs' application ordered that judgment be entered against the 2nd and 3rd defendants in the sum of $22,352.04, with interest thereon and costs, and that the 2nd and 3rd defendants be given unconditional leave to defend the balance of the claim of $1,182.20; as regards the 1st defendant's application, however, the Deputy Registrar dismissed it with costs. Against that part of the order giving judgment to the plaintiffs the 2nd and 3rd defendants appealed; but no appeal against the dismissal of the 1st defendant's application was brought. The appeal by the 2nd and 3rd defendants was heard by Chua J. on November 11,

1986, who allowed it, set aside the judgment for $22,352.04, interest and costs, and gave to the 2nd and 3rd defendants unconditional leave to defend the claim for the sum of $22,352.04. He also awarded to the 2nd and 3rd defendants costs of the appeal and the costs of the hearing before the Deputy Registrar. Immediately following the success of the appeal of the 2nd and 3rd defendants, the 1st defendant applied on November 14, 1986 for an order that execution on the judgment entered against it on October 25, 1984 be stayed "pending the determination of the issue whether there is any part of the judgment that still remains unpaid." The application was heard before the Assistant Registrar on November 21, 1986 and he dismissed it with costs. Against that decision this appeal is now brought.

The application by the 1st defendant was made under Order 45 Rule 11 which reads as follows:

"Without prejudice to Order 47, Rule 1, a party against whom a judgment has been given or an order made may apply to the Court for a stay of execution of the judgment or order or other relief on the ground of matters which have occurred since the date of the judgment or order, and the Court may by order grant such relief, and on such terms, as it thinks fit."

Clearly, in terms of Order 45 Rule 11 the Court's jurisdiction in granting a stay must be based on matters that have occurred since the date of the judgment and the question is what, in principle, are such matters that would move the Court to grant a stay. Mr. Kan for the 1st defendant referred me to paragraph 453 of Volume 17 of *Halsbury's* Laws of England (4th edn.) which contains the following passage touching on the English Order 45 Rule 11:

"Stay of execution for matters occurring after judgment. A party against whom a judgment has been given or an order made may apply to the court for a stay of execution of the judgment or order or other relief on the ground of matters which have occurred since the date of the judgment or order, and the court may by order grant such relief, and on such terms, as it thinks just. The facts must be such as would or might have prevented the order being made, or would or might have led to a stay of execution if they had already occurred at the date of the order."

The last sentence of this passage is derived from the judgment of Plowman J. in *Lodon Permanent Benefit Building Society* v. *de Baer.*[1] In that case a mortgagee under a legal mortgage obtained an order for possession of the mortgaged premises and the mortgagor subsequently applied for a stay of execution. Plowman J. held, *inter alia,* that Order 45 Rule 11 of the Rules of Supreme Court did not, on its true construction, confer any power to grant a stay of execution of an order for possession obtained by a legal mortgagee and that the power conferred by the rule was to grant relief on the ground of matters which would have prevented the order being made, or which would have led to a stay of execution if they had already occurred at the date of the order and that nothing had occurred since the date of the order for possession, which if it had occurred before then, would have prevented the order being made. He said, at page 334:

". . . However, it is unnecessary for me to decide the question of inherent jurisdiction in the present case, because I have reached the conclusion that R.S.C. Ord. 45, r. 11, under which the present application is made, does not, on its true construction, confer any power to grant a stay of execution on an order for possession made in favour of a legal mortgagee or a chargee by way of legal mortgage. The power conferred by that rule to grant relief is a power to do so, and I quote, 'on the ground of matters which have occurred since the date of the judgment or order.'

It is implicit in the rule that the matters referred to are matters which would or might have prevented the order being made, or would or might have led to a stay of execution if they had already occurred at the date of the order. But nothing has occurred in this case since the order of December 14, 1966, which, if it had occurred before that date, could have prevented the order being made or entitled the defendant to a stay of execution."

I respectfully adopt the statement of law quoted above from the judgment of Plowman J., namely: it is implicit in Order 45 rule 11 that the matters referred to are matters which would or might have prevented the order being made or would or might have led to a stay of execution if they had already occurred at the date of the order.

I now turn to the facts which I have earlier recounted and consider whether the matters that have occurred since the date of judgment against the 1st defendant fall within the ambit of Order 45 Rule 11. It seems to me that if no judgment had been entered against the 1st defendant, then by reason of the various matters that have occurred since the judgment, in particular, unconditional leave being given to the 2nd and 3rd defendants to defend the claim for the balance sum of $23,534, no judgment would have been entered against the 1st defendant for that amount or if a judgment had been entered at that date, there would have been a stay pending the outcome of the resolution of the dispute between the plaintiffs and the 2nd and 3rd defendants. In my judgment, these matters come within the ambit of Order 45 Rule 11 and, in the words of Plowman J., are matters which would or might have prevented a judgment for the sum of

$23,534 from being entered or made against the 1st defendant or would or might have led to a stay of execution if they had occurred at the date of the judgment against the 1st defendant. Therefore, in this case, a stay ought to be granted.

After the dismissal of the 1st defendant's application by the Assistant Registrar on November 21, 1986, the 1st defendant in order to stave off the making of a winding-up order on a winding-up petition presented against it by the plaintiffs paid to the plaintiffs a sum of $23,534.24 and interest, and also costs of $3,500 for the winding-up proceedings, totalling $29,219.94. The payment, however, was made under protest. It is urged on behalf of the 1st defendant that if a stay be granted a further order should be made directing the plaintiffs to repay the whole of this sum to the 1st defendant. As I have just said, this sum has two components: (i) a sum of $25,719.94 representing the balance sum and interest under the judgment against the 1st defendant, and (ii) a sum of $3,500 being the costs of the winding-up proceedings initiated against the 1st defendant. In my view, the first sum of $25,719.94 should now be repaid by the plaintiffs to the solicitors for the defendants to be held as stakeholders to await the outcome of the trial of this action against the 2nd and 3rd defendants and to abide by such order as the Court may make at the time. As for the sum of $3,500, I think it would be wrong for me to make any order with respect thereto. First, that sum was paid for the costs of the winding-up proceedings and does not form part of the sum said to be due to the plaintiffs under the judgment. Secondly, when the petition for winding up came on for hearing before Rajah J. he gave leave to withdraw the petition on application by the plaintiffs with no order as to costs "as costs have already been paid"; so Rajah J. had been told that costs had been paid. It seems to me that if it had not been represented to Rajah J. that costs had been paid, and the plaintiffs had asked for costs, it is likely that he would have ordered costs to be paid by the 1st defendant in the circumstances. I do not think I can make any order for the refund of such costs to the 1st defendant or its solicitors.

In the result, I allow the appeal, set aside that part of the order of the Assistant Registrar dated November 21, 1986, refusing a stay but the order as to costs of the application before him should stand; as I think the 1st defendant should bear the costs of the application. I order a stay of execution of the judgment entered against the 1st defendant on October 25, 1984, and further order that the plaintiffs pay to the solicitors for the defendants the sum of $25,719.94 to be held by such solicitors as stakeholders pending the outcome of the trial of the action against the 2nd and 3rd defendants and to abide by such order as the Court may then make. The plaintiffs further should pay to the 1st defendant the costs of this appeal.

Appeal allowed.

Solicitors: *Shook Lin & Bok; R.C.H. Lim & Co.*